

# Collection Profile Chile

## Collecting in Chile

- Although the payment behavior of domestic companies is generally good, with payments normally taking place within 60 days on average, standard payment terms are very broad (60 to 90 days).
- Courts are trustworthy however the system provides no fast track proceedings, meaning pre-legal action conducted by collection specialists is the most efficient way to obtain payment without incurring legal costs and delays.
- Debt renegotiation mechanisms aiming at rescuing companies have been put in place but these are rarely used, with liquidation remaining the default proceeding when it comes to dealing with insolvent debtors. Therefore the chances of collecting unsecured debt through insolvency courts are nonexistent.

## Collection complexity



## Complexity relating to

Notable      Severe  
→

Payments	\$ \$ \$ \$
Court proceedings	⚖️ ⚖️ ⚖️ ⚖️
Insolvency proceedings	↘️ ↘️ ↘️ ↘️



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## General information

### Availability of financial information

Financial information is not easy to obtain in Chile as companies do not need to file their accounts in a public register. Euler Hermes analysts gather and develop proprietary information and cross verify their conclusions with a payment experience provider in order to allocate each company a grade reflecting its financial health and how it conducts business. Grades represent a core of Euler Hermes knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

### Main corporate structures

Liability for business debts is determined by legal structures, which are described as follows:

- Limited Liability Companies (Empresa Individual) are the most common business structures because they require no minimum capital and

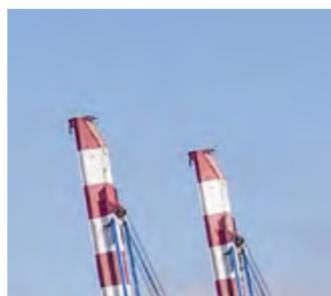
ensure shareholders' liability is limited to their contribution.

- Corporations (SA) allow regrouping of more shareholders, but their management rules are more constrictive. For instance, a board of directors must be nominated.
- Stock Companies (SpA) are also available when greater capital is needed, and its rules of operation are more flexible.

### Regulatory environment

The court system in Chile is divided between the first instance and Appellate Courts, taking geographical localization (debtor's address) and subject matters (civil and commercial law, criminal law, etc.) into account. At the highest level, the Supreme Court has jurisdiction on the national scale, but its work may be reinforced by Special Courts (dealing with antitrust matters, for example). The rules applicable to business litigation are mainly codified in a Civil Procedures Code (CPC) and a Court Statute Code (Código Orgánico de Tribunales).

It should be emphasized that Chilean courts are independent from executive power and while being equipped with a sensible dose of patience is necessary, commencing legal action before court is fairly reasonable.



**Days Sales Outstanding (DSO):** Payments in Chile normally take place within 60 days, and delays in obtaining payments are rare.





### Late payment interest:

Regulations provide for maximum interest rates, but these remain complex to calculate as different indicators would apply.



## Getting Paid

### Days Sales Outstanding (DSO)

Payments in Chile take place within 60 days on average, and delays in obtaining payments are rare, as traditionally, observing payment terms is a cultural requirement. In addition, all payment incidents in Chile are recorded by a database managed by a private company, and most individuals and corporations try to have a clean record since this database is consulted for most business transactions regardless of amount. That being said, the international economic crisis has had an impact on companies' cash flows lately, thus impacting payment behaviors.

### Late payment interest

Late payment is regulated by law and interest rates (intereses moratorios) are published periodically by the Central Bank. Regulations provide for maximum interest rates, but these remain complex to calculate as different indicators would apply depending on the currency used, the amount due and the payment delays.

### Debt collection costs

Collection costs may be charged to the debtor provided that the parties' contractual agreement allows for such a possibility. Judicial debt collection costs can always be charged.

### Ownership protection

Retention of Title provisions – aiming at retaining ownership over goods until the related invoice has been paid in full – are not common in Chile.

### Payments

The most common payment methods are as follows:

- Swift bank transfers are among the most popular payment means as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically.
- Export transactions are usually guaranteed through Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) which constitute reliable guarantees to be interpreted as a sign of good faith since they can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment.
- Alternatively, confirmed Documentary Letters of Credit (a debtor guarantees that a certain amount of money is made available to a beneficiary through a bank once certain terms specifically agreed by the parties have been met) may be considered.
- Generally speaking, use of checks is very common (but in order to be considered as enforceable debt recognition titles they have to be signed before a public notary) and local bank guarantees can be obtained at reasonable prices.

It is also worth adding that approximately 20% of transactions in Chile are paid in advance.

## Collecting overdues

### Amicable action

#### Negotiating

Amicable settlement negotiation prior to conducting formal legal action is not mandatory by law but remains highly advisable. Firstly, although the courts are reliable, the chances of reaching an acceptable compromise in due time are greater than the chances of obtaining a timely court decision because formal legal action in Chile is time consuming. Secondly, courts in Chile cannot enter summary judgment or fast-track proceedings, which implies that amicable negotiations are the only way to obtain payment without starting formal litigation for small and medium cases in which legal costs would be disproportionate. Finally, the courts are in theory required to establish whether the parties have considered settling the dispute through mediation before initiating the evidence phase (this obligation is observed in practice, but the number of cases where the debtor pays are low).

Before starting legal proceedings against a debtor, assessment of assets is important to verify that the company is still active and whether recovery chances are at their best. In addition, it is essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it indeed becomes impossible to enforce a debt.

### Legal action

#### Ordinary proceedings

If the amicable phase fails or if the debtor questions the claim, the option of starting legal proceedings remains.

A judicial notice must be served to the debtor by a court clerk (Receptore). The respondent must then answer the complaint within fifteen days but, insofar as there is no summary proceeding for default judgments, the creditor will have to prove their allegations entirely despite the debtor's absence. Therefore, legal representation is essential. Chilean courts would then typically render a judgment recognizing a right, ordering a specific performance, or allowing attachment of the debtor's assets. As a general rule, damages in Chile are to be considered broadly but punitive damages cannot be awarded.

#### Necessary documents

Original invoices, bank account statements showing the existing relationship with the debtor, as well as debt recognition titles and any document(s) demonstrating the existence of a certain debt.

#### Time limitations

As a general rule, claims must be brought to court within five years, starting from the date where the cause of action arose. Commercial contract claims and tort claims must be brought within four years. However, these limitations do not seem to constitute strict deadlines and judges would tend to authorize legal action depending on the

nature of the document containing the debt (provided that the creditor does not allege prescription).

#### Provisional measures

Provisional measures may help preserve the creditor's interests pending a final and enforceable judgment. Indeed, the courts may order pre-action remedies ex parte (without the presence of both parties), before or during the proceedings, to avoid irreparable damage and preserve the status quo (preventive attachment, prohibition to execute an act or contract) or to protect evidence. The claimant would be required to file a motivated request demonstrating the urgent and absolute necessity of granting such an injunction, and the court would most likely request for security on costs to be provided in order to protect the debtor from irresponsible action.

#### Lodging an appeal

The parties may appeal against a decision rendered in first instance, whether on the merits of the case, or on formal legal grounds. Similarly, decisions rendered by Appellate Courts may be questioned as the parties may request nullity before the Supreme Court on procedural grounds or because of errors in the application of the law. Appeal remedies must be filed within ten days of decision notification.

#### Enforcing court decisions

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted). If the debtor fails to satisfy the court decision, enforcement may occur through the attachment and auction of the debtor's assets. Collection from a third party owing the debtor is not possible.

Enforcement proceedings must be initiated within one year, if processed through the court that pronounced the judgment, or three years if using a different court.

#### Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgement and enforcement.

### How long could legal action take?

Obtaining a first instance decision in Chile may take two to three years on average, but this may be at least doubled if the claim is disputed by the parties. After such a long period of time, there might however be nothing left to recover and in this case pre-legal recovery remains the best option.

In principle, domestic courts would not take longer to deal with cases involving a foreign party than to deal with cases involving domestic parties only. In practice, some extra delays would nonetheless occur depending on the complexity of each case.

### How much could this cost?

Court proceedings in Chile are free of cost but, as a general rule, the successful party may demand payment by the defeated party of a partial indemnity to compensate for its legal costs, unless the court finds that the defeated party had a legitimate reason to litigate.

Attorney costs could reach 10% of the claim on average. Conditional arrangements whereby attorneys are not paid up-front but rather receive a fixed sum upon success are authorized by law but not common. Use of third party litigation funding companies is lawful.

## Alternatives to legal action

### Alternative Dispute Resolution methods (ADR)

As a result of the difficulty to obtain timely decisions from courts, Alternative Dispute Resolution methods are increasingly common in Chile for business-related disputes, especially in relation to breach of contract.

As already mentioned, mediation ought to be mandatory during civil proceedings, but this step is not automatic in practice. Arbitration (regulated under the Arbitration Act, Law No. 9307/96) and international arbitration (regulated by Law 19.971 on International Commercial Arbitration) are nonetheless often viewed as being more efficient than ordinary lawsuits because they may offer expeditious and confidential proceedings together with a final and binding award on the merits.

However, all subject matter cannot be considered through arbitration because Chilean courts retain exclusive jurisdiction over various areas of law. To be enforced, arbitral awards must also be recognized by a court of first instance through an exequatur proceeding.

### Foreign forums

Relying on a foreign court to avoid domestic proceedings is not possible in Chile where, typically, domestic courts would retain exclusive jurisdiction over various areas of law.

### Enforcing foreign awards

Foreign judgments against domestic debtors may be enforced in Chile provided that they have been validated by the Supreme Court through an exequatur proceeding. The claimant must provide the court with a translated and certified copy of the decision as it will verify that the decision is final and enforceable in the issuing country, that enforcement is not incompatible with Chilean public policy, and



that the parties both benefited from a due process of law. It should be added that recognition of foreign judgments in Chile strictly operates on a reciprocity basis, meaning that decisions rendered in a country where Chilean decisions are not recognized will not be recognized in Chile.

The whole exequatur process can last from two months to a year. Once recognized, the foreign judgment may be presented to the competent civil court to be enforced as any domestic decision. In addition, Chile is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Therefore, domestic courts also ought to recognize and enforce decisions rendered through international arbitration proceedings.

### Litigation @ Euler Hermes

Should legal action be necessary Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

## Handling insolvent debtors

The Chilean insolvency system is regulated by the Chilean Bankruptcy Act (new insolvency law and re-entrepreneurship) contained in the Chilean Code of Commerce. As a result, the main purpose of insolvency law is to pay as much as possible of the debts out of liquidation proceedings.

It may be noted that a creditor would normally be entitled to receive a refund corresponding to the VAT (i.e. 19%) paid to the debtor when the latter is declared in compulsory liquidation (bankrupt) by the court. However, it is extremely rare for an unsecured creditor to get any (non VAT-related) money back at the end of insolvency proceedings.

### Insolvency proceedings

#### Out-of-Court proceedings

An out-of-court restructuring procedure must be documented in an agreement signed before a public notary, normally backed by a set of checks also signed in front of the notary. Grace periods of up to a year are also common in these negotiations.

#### Restructuring the debt:

The law provides a formal procedure to achieve restructuring of the debt so as to allow the company's survival. The debtor firstly has a legal obligation to declare its insolvency to the court when it becomes unable to pay its debts when they fall due, but a debt restructuring mechanism may then be put in place to allow the parties to reach an agreement (reorganization agreement) under the supervision of a court-appointed administrator (Veedor). In practice, however, creditors very rarely agree to wait for their debt to be paid and debt renegotiation proceedings are hardly ever used.

#### Winding up proceedings

Since debt restructuring mechanisms are not relied upon, liquidation is the default insolvency proceeding in practice. Liquidation is organized through a single procedure initiated upon demand of the debtor or creditor. In particular, creditors can file for bankruptcy (compulsory liquidation) when a debtor defaults or disappears without appointing an administrator for its business. Once bankruptcy has been declared, a trustee is given responsibility for the debtor's business and assets. As mentioned, overall it remains extremely rare for an unsecured creditor to get any money back at the end of insolvency proceedings, because priority rules normally apply while distributing the proceeds to the creditors (under Articles 2472-2489 of the Civil Code).

#### Priority rules

Priority is always given to secured credits which include court costs, administrative expenses related to the insolvency proceedings, employees' claims and pensions, tax credits, etc. Deposits and mortgages would then be considered but could be given supreme priority if the assets are sufficient to repay secured credits, as well. Non preferential unsecured debts (valistas) would then be considered last, when all debts have been cleared.



#### Cancellation of suspect transactions (clawback)

The insolvency administrator or liquidator is normally allowed to request cancellation of any suspect transaction, provided that the latter has taken place within the year preceding the bankruptcy declaration.

#### How long could insolvency proceedings take?

Insolvency proceedings in Chile normally take place between two to three years.

#### Necessary documents

Original invoices, bank account statements proving the existing relationship with the debtor, as well as debt recognition titles and any document(s) demonstrating the existence of a certain debt.

#### Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.

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